IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

C.W.P. No.320 of 2000

Judgment reserved on: 7.8.2007

Date of decision: 27th August, 2007

Sunder Singh ....Petitioner

-Versus-

State of H.P. and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice V.K.Ahuja, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.Surinder Sharma, Advocate.

For Respondents: Mr.M.S.Chandel, Advocate General with Mr.R.M.Bisht,Dy.A.G. & Mr.J.S.Guleria, Law officer for respondents 1 to 4. Mr.Shrawan Dogra, counsel for R-5.

Deepak Gupta, J.

This writ petition is directed against the order of the learned Tribunal in O.A. No.2030 of 1997 whereby the appointment of the present petitioner as a water carrier has been set-aside and the learned Tribunal has directed that respondent No.1 to 4 should appoint the respondent No.5 herein as water carrier in Government Primary School, Banwani, Tehsil Sangrah, District Sirmour, H.P.

The present petitioner was appointed as water carrier in the aforesaid school. His appointment was challenged by respondent No.5 before the learned Tribunal by filing the aforesaid O.A. The case of the respondent No.5 was that he had been working as water

carrier on honorary basis since the year 1996. According to the letter dated 2nd January, 1997 issued by the State of Himachal Pradesh a decision had been taken that all water carriers appointed by the Parents Teachers Association or Local Panchayats on honorary basis prior to 31.3.1996 would be continued as such. The Tribunal came to the conclusion that the respondent No.5 was appointed as water carrier in the Government Primary School, Banwani by the local Panchayat on honorary basis prior to 31.3.1996 and therefore he was entitled to continue in the said post. There are various documents on record to show that respondent No.5 was employed by the Panchayat and worked as honorary water carrier without any wages. The Tribunal has relied upon the intra departmental communications in the Education Department itself to come to this conclusion and on this basis has held that the appointment of the present petitioner was illegal and invalid and had ordered the appointment of respondent No.5.

The main crux of the arguments of Shri Surinder Sharma is that the finding that the respondent No.5 was engaged as honorary water carrier prior to 31.3.1996 is contrary to the record and is not based on any cogent material. He has also tried to highlight that there are certain differences and contradiction in the dates with regard to the initial appointment of the respondent No.5.

We in exercise of our powers of judicial review cannot go into questions of fact. The Tribunal has come to a finding of fact on the basis of material produced before it that the respondent No.5 had in

fact been engaged as honorary water carrier prior to 31.3.1996. We are unable to agree with Shri Surinder Sharma that the documents relied upon are incorrect or false. There is a document on record which show that the respondent No.5 was working as water carrier from August, 1995. This document has been issued by the President, Gram Panchayat concerned. There is no reason to disbelieve this document.

In view of the above discussion, we find no merit in the writ petition which is dismissed. No costs.

(Deepak Gupta),
Judge

August 27, 2007.
PV

(V.K. Ahuja),
Judge